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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re T.B. et al., Persons Coming Under the  
Juvenile Court Law.

B217515  
(Los Angeles County  
Super. Ct. No. CK58817)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.J.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Donna Levin, Juvenile Court Referee. Affirmed.

Nancy O. Flores, under appointment by the Court of Appeal, for Defendant and Appellant.

Robert E. Kalunian, Acting County Counsel, James M. Owens, Assistant County Counsel, and Jacklyn K. Louie, Senior Deputy County Counsel, for Plaintiff and Respondent.

M.J. (Mother) appeals from a July 9, 2009 order terminating her parental rights to two children, T.B. (born in Jan. 2007) and D.J. (born in Dec. 2007). Mother seeks review of an earlier order of February 10, 2009, denying without a hearing her petition for modification seeking reunification services and unmonitored visits. After the briefing on the instant appeal was completed, we filed our decision in Mother's earlier appeal from the February 10, 2009 order, affirming that order. (*In re T.B.* (Oct. 28, 2009, B214469) [nonpub. opn.].) The decision in the earlier appeal operates as law of the case and we thus affirm the July 9, 2009 order terminating parental rights.

### **BACKGROUND<sup>1</sup>**

In prior dependency proceedings, parental rights were terminated in October 2006 to Mother's older child, D.A., due to Mother's illegal drug use and failure to take her psychotropic medication for a psychiatric condition, including bipolar disorder. In late April 2007, T.B. was detained from Mother and R.B. (Father) and placed with a nonrelative extended family member after the Los Angeles County Department of Children and Family Services (DCFS) received a report that the parents were smoking marijuana in T.B.'s presence and that Father sold drugs. T.B. remained with the same caretaker throughout the proceedings set out below.

In May 2007, Mother was enrolled in an inpatient treatment program but was “kicked out” of the program on June 1, 2007, due to her temper, fights, unexcused absences from the program, and noncooperation. In May 2007, both parents tested positive for marijuana; Father also tested positive for cocaine. Mother blamed DCFS for her marijuana use, claiming that she used marijuana on the day T.B. was detained because she was stressed over the detention. At the time Mother tested positive, she was pregnant with D.J.

In June 2007, the juvenile court declared T.B. a dependent of the juvenile court pursuant to Welfare and Institutions Code section 300, subdivision (b) (failure to protect)

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<sup>1</sup> The facts through February 10, 2009, are taken from the prior nonpublished opinion. (*In re T.B.*, *supra*, B214469.)

based on the parents' history of substance abuse and current use of marijuana.<sup>2</sup> T.B. was removed from parental custody. Father was afforded reunification services, but services were denied to Mother pursuant to section 361.5, subdivision (b)(10) (failure to reunify with a sibling) and (11) (termination of parental rights as to sibling). The parents were permitted monitored visitation three times per week.

The December 2007 status review report stated that Mother was then eight months pregnant with her third child (D.J.). Mother visited T.B. consistently. Although reunification services were not ordered for Mother, she enrolled in counseling through Homeless Health Care of Los Angeles and continued to drug test with negative results from June through October 2007. At the December 18, 2007 hearing, the court gave DCFS discretion to liberalize Mother's visits.

On December 24, 2007, Mother gave birth to D.J., who was detained on January 3, 2008, with a nonrelative extended family member (the daughter of the caretaker for T.B.) after DCFS received a report that Mother allowed people at the Homeless Health Care agency to hold and kiss three-day-old D.J. and did not seem to understand that she was exposing him to colds, that Mother took D.J. to a drug-infested shelter and left him unsupervised on the bed and went outside for twenty minutes, and that Mother walked around with him late at night in cold weather looking for a motel room in Los Angeles. A DCFS social worker visited Mother at her motel room, where there was a strong odor of marijuana.

In a team decision-making meeting on January 4, 2008, Mother agreed to participate in services, including a dual diagnosis treatment program, a mental health assessment including an evaluation of her medication, parenting classes, and individual therapy. DCFS was to provide funds for housing assistance. On January 22, 2008, Mother was ordered to random drug testing.

In March 2008, DCFS reported that Mother was visiting her children regularly, was in therapy and was being seen by a psychiatrist. Mother was taking her medications

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<sup>2</sup> Unspecified statutory references are to the Welfare and Institutions Code.

and actively participating in drug treatment and parenting programs. Notwithstanding Mother's current compliance, DCFS recommended that Mother not receive reunification services because of her unresolved mental health issue "that is probably the primary factor in her continued homelessness and poor judgment. In the past two years the mother has moved from place to place living in shelters and/or motels. Many of the shelters and/or motels are havens for substance abuse and/or related activities which place the child at risk, especially with the mother's substance abuse history." Father's whereabouts were unknown to DCFS, but in a telephone conversation with DCFS, Father questioned his paternity of D.J. Father also admitted that he had not been participating in random drug tests, had not appeared in court on hearings related to D.J., and had not visited him.

On March 12, 2008, the juvenile court adjudicated D.J. a dependent pursuant to section 300, subdivision (b), based on Father's history of substance abuse and the dependency status of T.B., and based on Mother's history of substance abuse, failure to participate regularly in a rehabilitation program, history of mental and emotional problems, and T.B.'s receipt of permanent placement services. The court removed D.J. from Mother's custody, found Father was an alleged father as to D.J., and denied reunification services to Father. Mother also was denied family reunification services but was permitted monitored visitation with D.J. Father's reunification services with T.B. were terminated and a permanent plan hearing was set for both T.B. and D.J. on July 9, 2008.

In its July 9, 2008 section 366.26 report, DCFS stated that each of the children's caretakers was committed to adoption and the respective home studies were expected to be completed by October 2008. Mother continued to visit the children regularly. In July 2008, the permanent plan hearing was continued to November 5, 2008.

A September 10, 2008 status review report stated that T.B. was very attached to her caretaker and was thriving in her home. On September 26, 2008, DCFS reported that it had to remove D.J. from his caretaker, the prospective adoptive parent, and place him in another foster home after social workers observed the caretaker's home to be

unsanitary and the caretaker herself to have medical, health, and physical limitations due to her excessive weight. A public health nurse found D.J. moderately underweight, not well-bonded to his caregiver, and living in an unhealthy environment. The juvenile court stated, “[T]his is a very, very disturbing report,” and ordered DCFS to investigate the home of T.B.’s caretaker, who was the mother of D.J.’s former caretaker.

In a November 5, 2008 interim review report, DCFS stated that T.B.’s prospective adoptive parent had been required to take 10 parenting classes after she threatened to hit T.B. with a spoon; by October 31, 2008, the caretaker had completed three parenting classes. DCFS also had concerns about T.B.’s aggressive behaviors and delayed speech and had referred her for play therapy and the Regional Center. DCFS was monitoring T.B.’s situation closely. D.J. was thriving in the home of his new prospective parents, to whom he was bonded. D.J.’s new prospective adoptive parents had an approved home study. On November 5, 2008, the section 366.26 hearing was continued to March 4, 2009.

On February 4, 2009, Mother filed a petition for modification, seeking reunification services and unmonitored visits with discretion for DCFS to permit overnight and weekend visits. Attached to the petition were certificates showing that after the March 12, 2008 order denying services, Mother completed individual counseling, a one-year integrated program for “co-occurring disorders,” including twice a week group counseling, once a week individual substance abuse counseling, a 10-week parenting program, socialization activities, a women’s group, and medication compliance with a staff psychiatrist. She also had consistently visited the children as often as permitted by DCFS.

The petition asserted that the modification would be in the children’s best interests because “[t]he children are not in the same adoptive placement and there are issues as to the suitability of the prospective adoptive parents. If the children were to be moved again, it would be best if mother were allowed to be considered as the permanent placement for the children.”

The juvenile court denied Mother's petition without a hearing on February 10, 2009, on the ground that the proposed change of order does not promote the children's best interests. We upheld that ruling on Mother's prior appeal. (*In re T.B.*, *supra*, B214469.)

After a hearing on July 9, 2009, the juvenile court terminated parental rights to T.B. and D.J. Mother did not argue any exception to termination of parental rights. Mother appealed from the July 9, 2009 order.

### **DISCUSSION**

According to Mother's opening brief, she appealed from the July 9, 2009 order "simply to preserve her right to appeal the denial of her section 388 petition." As Mother has had her appeal from the order denying her section 388 petition, and the decision on the prior appeal from that order is now final, it operates as law of the case. "The law of the case doctrine states that when, in deciding an appeal, an appellate court 'states in its opinion a principle or rule of law necessary to the decision, that principle or rule becomes the law of the case and must be adhered to throughout its subsequent progress, both in the lower court and upon subsequent appeal . . . .'" (*Kowis v. Howard* (1992) 3 Cal.4th 888, 892–893; see also *James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1019 [law of case doctrine is applicable to dependency writ proceedings].)

In the prior appeal, we held that the juvenile court did not abuse its discretion in denying Mother's section 388 petition without a hearing. That ruling is law of the case with respect to the same issue raised in this subsequent appeal. We thus affirm the July 9, 2009 order.

**DISPOSITION**

The July 9, 2009 order is affirmed.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

CHANEY, J.

JOHNSON, J.